

Parks International Corporation; Constructo Workforce Temps, Inc. and Local Union 342 of the International Brotherhood of Electrical Workers, AFL-CIO. Case 11-CA-18654-1

June 13, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAMBER
AND WALSH

The General Counsel seeks a default judgment¹ in this case on the ground that the Respondents have failed to file an answer to the complaint. Upon a charge filed by the Union on April 17, 2000, the General Counsel issued the complaint on August 22, 2002, against Parks International Corporation and Constructo Workforce Temps, Inc., the Respondents, alleging that they have violated Section 8(a)(1) and (3) of the Act. The Respondents failed to file an answer.

On October 28, 2002, the General Counsel filed with the Board a Motion for Summary Judgment, and Memorandum in Support.² On October 30, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motions are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.³

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

¹ The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a Motion for Default Judgment.

² The General Counsel filed a motion to file a corrected memorandum on November 8, 2002. The motion is granted.

³ Copies of the complaint, served by certified mail on Respondent Parks, were returned as undeliverable. However, it is well established that the failure to accept certified mail or to provide for proper service cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Although it appears that no further reminder letter was sent to the Respondents, this does not warrant denying the General Counsel's Motion for Default Judgment. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Parks is now, and has been at all times material herein, a Tennessee corporation, which operated a jobsite located in Winston-Salem, North Carolina, where it was engaged in performing electrical construction services. During the 12-month period preceding issuance of the complaint, Respondent Parks performed services valued in excess of \$50,000 in States other than the State of North Carolina. Respondent Parks is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent Constructo is now, and has been at all times material herein, a New Jersey corporation, with an office located at Ft. Lee, New Jersey, where it is engaged in providing temporary employees to various employers, including employees who performed electrical construction work at Respondent Parks' Winston-Salem, North Carolina jobsites. During the 12-month period preceding issuance of the complaint, Respondent Constructo performed services valued in excess of \$50,000 in States other than the State of North Carolina. Respondent Constructo is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

At all times material herein, Respondent Constructo provided temporary employees to Respondent Parks at Respondent Parks' Winston-Salem, North Carolina jobsites, pursuant to a contract with Respondent Parks. At all times material herein, Respondent Parks and Respondent Constructo have been joint employers of the temporary employees provided by Respondent Constructo to Respondent Parks at Respondent Parks' Winston-Salem, North Carolina jobsites.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all times material herein, the following-named persons occupied the positions set opposite their names, and have been, and are now, agents of the Respondents, acting on their behalf and are supervisors within the meaning of Section 2(11) of the Act:

Howard (Cotton) Decuir Sr.—Parks, Superintendent

Howard (Bubba) Decuir Jr.—Parks, Foreman

John Keenan—Parks, Foreman

_____ Devlin (first name unknown)—Parks, Leadman

Ron Kroege—Constructo, Management Official
 _____ Howard (first name unknown)—Constructo,
 Management Official

Since on or about February 29, 2000, and continuing to date, the Respondents, through the actions of their agent and supervisor, Howard (Cotton) Decuir, at Respondent Parks' Winston-Salem, North Carolina jobsite, have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing their employees in the exercise of rights guaranteed in Section 7 of the Act by the following acts and conduct:

(a) Threatening their employees with discharge for supporting the Union on March 17, 2000.

(b) Interrogating their employees regarding their union sympathies and desires on March 17, 2000.

(c) Informing their employees that it had discharged union members on April 7, 2000.

(d) Informing their employees that they would not employ union members on April 7, 2000.

The Respondents refused to hire the employee named below on or about the date set opposite his name:

Reuben Blakeney—March 21, 2001

Respondent Parks discharged, and failed to reinstate, the following named employees on or about the dates set opposite their names.

Douglas Summers—March 3, 2000

John Anderson—March 3, 2000

Michael Miller—March 3, 2000

William Baker—March 18, 2000

Kenneth Sandboeth—April 10, 2000

The Respondents engaged in the conduct described above because the employees named therein joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

CONCLUSIONS OF LAW

1. By informing employees that they had discharged union members and would not hire union members, by threatening employees with discharge for supporting the Union, and by interrogating employees about their union activities and the union activities of other employees, the Respondents have interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By refusing to hire Reuben Blakeney, the Respondents have been discriminating in regard to the hire or tenure or terms and conditions of employment of their employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

3. By discharging Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth, and failing to offer them reinstatement to their former positions, Respondent Parks has been discriminating in regard to the hire or tenure or terms and conditions of employment of their employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.⁴

4. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondents shall be ordered to:

⁴ Unlike our colleague, we believe that the complaint is insufficient to warrant the imposition of liability for the alleged discharges on Constructo. First, the complaint is at best ambiguous as to whether it seeks to impose such joint liability on Constructo. The complaint alleges that Parks alone discharged the employees. In this regard, par. 14 alleges only that Respondent Parks discharged the five named employees. Contrary to our colleague, we do not find that subsequent complaint allegations establish otherwise. At best, the summary or "wrap up" par. 17 created an ambiguity; it was not sufficient to put Respondent Constructo on notice of alleged joint liability for the discharges. Second, we find that the complaint is insufficient in that it does not allege that the discharged employees were part of the jointly managed work force. See *Action Temporary Employment*, 337 NLRB 268, 269 (2001). This jointly managed work force allegation is an ultimate fact which must be alleged, as distinguished from evidentiary support which need not be alleged. See *Boilermakers Local 363 (Fluor Corp.)*, 123 NLRB 1877, 1913 (1959).

Member Walsh disagrees with his colleagues' reading of the complaint. Although par. 14 alleges that only Respondent Parks discharged and refused to reinstate the five employees, pars. 16 and 17 allege that both "Respondents, by the acts described above in paragraph[] . . . 14 . . . , and by each of said acts," violated Sec. 8(a)(3) and (1) of the Act. Thus, the General Counsel is alleging that Respondent Constructo is liable for the unlawful conduct of Respondent Parks. By failing to file an answer, Respondent Constructo has admitted all of the complaint allegations, including the allegations of pars. 16 and 17. Further, it is not necessary for the complaint to specifically allege that the discharged employees were part of the "jointly managed work force" within the meaning of *Capitol EMI Music*, 311 NLRB 997, 1000 (1993), *enfd. mem.* 23 F.3d 399 (4th Cir. 1994). See *Boilermakers Local 363*, *supra* (complaint need not set out all the elements of a cause of action). Accordingly, Member Walsh would find that Respondent Constructo is jointly liable for Respondent Parks' unlawful actions against the five employees, and he would so provide in the remedial Order.

(1) Cease and desist from informing employees that the Respondents had discharged union members and would not hire union members, and threatening and interrogating employees about their union activities and the union activities of other employees.

(2) Offer Reuben Blakeney instatement to the position for which he applied or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges.

(3) Make Reuben Blakeney whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(4) Remove from their files any and all references to the unlawful refusal to hire Blakeney, and notify him that this has been done.

Further, Respondent Parks shall be ordered to:

(1) Offer Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(2) Make Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

(3) Remove from its files any and all references to the unlawful discharges, and notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that

A. Respondent Constructo Workforce Temps, Inc., Ft. Lee, New Jersey, and Winston-Salem, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge for supporting the Union.

(b) Interrogating employees regarding their union sympathies and desires.

(c) Informing employees that they discharged union members.

(d) Informing employees that they will not employ union members.

(e) Refusing to hire employees because they joined, supported, or assisted the Union and engaged in con-

certed activities, and to discourage employees from engaging in these activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Reuben Blakeney instatement to the position for which he applied or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges.

(b) Jointly and severally with Respondent Parks International Corp., make Reuben Blakeney whole for any loss of earnings and other benefits he suffered as a result of the unlawful discrimination against him, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful refusal to hire Reuben Blakeney, and within 3 days thereafter, notify him in writing that this has been done, and that the unlawful conduct will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Ft. Lee, New Jersey, and Winston-Salem, North Carolina, copies of the attached notice marked "Appendix A."⁵ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 29, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. Respondent Parks International Corporation, Winston-Salem, North Carolina, its officers, agent, successors, and assigns shall

1. Cease and desist from

(a) Threatening employees with discharge for supporting the Union.

(b) Interrogating employees regarding their union sympathies and desires.

(c) Informing employees that they discharged union members.

(d) Informing employees that they will not employ union members.

(e) Refusing to hire, discharging, and failing to reinstate employees because they joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Reuben Blakeney instatement to the position for which he applied or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges.

(b) Jointly and severally with Respondent Constructo Workforce Temps, Inc., make Reuben Blakeney whole for any loss of earnings and other benefits he suffered as a result of the unlawful discrimination against him, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, offer Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(d) Make Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(e) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful refusal to hire Reuben Blakeney and the terminations of Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Winston-Salem, North Carolina, copies of the attached notice marked "Appendix B."⁶ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 29, 2000.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

⁶ See fn. 5, *supra*.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
 Choose representatives to bargain with us on your behalf
 Act together with other employees for your benefit and protection
 Choose not to engage in any of these protected activities.

WE WILL NOT threaten our employees with discharge for supporting the Union.

WE WILL NOT interrogate employees regarding their union sympathies and desires.

WE WILL NOT inform employees that we discharged union members.

WE WILL NOT inform employees that we will not employ union members.

WE WILL NOT refuse to hire employees because they joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Ruben Blakeney instatement to the position for which he applied or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges.

WE WILL, jointly and severally with Parks International Corporation, make Ruben Blakeney whole for any loss of earnings and other benefits he suffered as a result of the unlawful discrimination against him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful refusal to hire Reuben Blakeney, and WE WILL, within 3 days thereafter, notify him in writing that this has been done, and that the unlawful conduct will not be used against him in any way.

CONSTRUCTO WORKFORCE TEMPS, INC.

APPENDIX B

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
 Choose representatives to bargain with us on your behalf
 Act together with other employees for your benefit and protection
 Choose not to engage in any of these protected activities.

WE WILL NOT threaten our employees with discharge for supporting the Union.

WE WILL NOT interrogate employees regarding their union sympathies and desires.

WE WILL NOT inform employees that we discharged union members.

WE WILL NOT inform employees that we will not employ union members.

WE WILL NOT refuse to hire, discharge, and fail to reinstate employees because they joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Ruben Blakeney instatement to the position for which he applied or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges.

WE WILL, jointly and severally with Constructo Workforce Temps, Inc., make Ruben Blakeney whole for any loss of earnings and other benefits he suffered as a result of the unlawful discrimination against him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful refusal to hire Reuben Blakeney and the terminations of Douglas Summers, John Anderson, Michael Miller, William Baker, and Kenneth Sandboeth, and WE

WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

PARKS INTERNATIONAL CORPORATION